## Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

In the Matter of	)	
	)	
Inquiry Concerning the Deployment of	)	GN Docket No. 12-228
Advanced Telecommunications Capacity to	)	
All Americans in a Reasonable and Timely	)	
Fashion, and Possible Steps to Accelerate	)	
Such Deployment Pursuant to Section 706 of	)	
the Telecommunications Act of 1996,	)	
as Amended by the Broadband Data	)	
Improvement Act	)	
•	)	

### COMMENTS OF THE COMPETITIVE CARRIERS ASSOCIATION

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### COMMENTS OF THE COMPETITIVE CARRIERS ASSOCIATION

The Competitive Carriers Association ("CCA")<sup>1</sup> hereby submits comments in response to the Commission's Ninth Broadband Progress Notice of Inquiry. 2 CCA is an association representing more than 100 competitive wireless providers across the United States, most of whom serve fewer than 500,000 customers. CCA's role as the leading voice for competitive wireless carriers on legal and policy issues gives it a unique perspective on the state of wireless competition.

<sup>1</sup> CCA recently changed its name from RCA—The Competitive Carriers Association to more accurately reflect its membership.

Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act, GN Docket No. 12-228, Ninth Broadband Progress Notice of Inquiry, FCC 12-91 (rel. Aug. 21, 2012) ("Ninth NOI").

### I. INTRODUCTION AND SUMMARY

"[P]rotecting competition and incentives to build out wired and wireless broadband is core to the FCC's statutory responsibilities." In its 2012 Eighth Broadband Progress Report, the Commission identified several impediments to deployment and competition in broadband, including costs and delays in building out networks, and lack of access to computers and other broadband-capable equipment. While the FCC has made progress, there are several things the FCC can do to improve and accelerate broadband deployment and availability, including making changes to its spectrum screen and other tools used to evaluate spectrum-related transactions, structuring auctions in pro-competitive ways, restoring interoperability in the Lower 700 MHz Band, and ensuring access to vital inputs such as reasonable roaming agreements and special access services.

CCA has often expressed concern about the state of mobile wireless competition in the United States and continues to believe that Verizon Wireless's and AT&T's dual hegemony is causing a variety of competitive harms, directly resulting in the diminution of broadband deployment to all Americans. Specifically, the overly concentrated status of the wireless sector has caused scarce spectrum—the industry's "most precious asset"—to be amassed in the hands of the two largest carriers, to the exclusion of smaller rivals. The Commission's recent approval

Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC For Consent to Assign AWS-1 Licenses, WT Docket No. 12-4, Statement of Chairman Julius Genachowski (rel. Aug. 23, 2012).

Inquiry Concerning the Deployment of Advanced Telecommunications to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act, GN Docket No. 11-121, Eighth Broadband Progress Report, FCC 12-90 at Section IV.G, V (rel. Aug. 21, 2012) ("2012 Eighth Broadband Progress Report")).

See, e.g., Scott Moritz and Todd Shields, *AT&T* in Spectrum Spree to Catch Verizon, available at http://www.bloomberg.com/news/2012-08-30/at-t-amassing-spectrum-deals-in-catch-up-bid-with-verizon.html (visited Sept. 13, 2012).

of the Verizon Wireless/SpectrumCo/Cox transactions, and AT&T's multiple proposed acquisitions of spectrum licenses in the Lower 700 MHz B and C Blocks, Advanced Wireless Services ("AWS") Band and Wireless Communications Services ("WCS") Band<sup>7</sup> has and will further solidify Verizon Wireless's and AT&T's (the "Twin Bells") status as megacarriers. Even before these transactions, Verizon Wireless held 90 MHz and AT&T 88 MHz of spectrum; together, the Twin Bells hold approximately 178 MHz of nationwide spectrum.<sup>8</sup> The Twin Bells' dominant spectrum position has conferred enormous (and potentially insurmountable) advantages over competitive carriers. Their enormous size and scale have conferred tremendous and self-perpetuating financial advantages over competitors, including a significantly lower cost of capital which allows them to outbid rivals in any secondary market transactions or spectrum auctions in the absence of Commission action. In addition, the market power enjoyed by the Twin Bells has enabled them to thwart interoperability across the 700 MHz band. And despite the Commission's *Data Roaming Order*, competitive carriers continue to face challenges securing roaming agreements from the two largest carriers on just and reasonable terms and conditions.<sup>10</sup>

Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC For Consent to Assign AWS-1 Licenses, WT Docket No. 12-4, Memorandum Opinion and Order and Declaratory Ruling, FCC 12-95 (rel. Aug. 23, 2012) ("Verizon-SpectrumCo Order").

See Petition of RCA—The Competitive Carriers Association for Conditions and Consolidated Treatment, AT&T Mobility Spectrum LLC and Triad 700, LLC Seek FCC Consent to the Assignment of 27 Lower 700 MHz Band B Block Licenses, ULS File No. 0005286787, at n.3 (filed Aug. 15, 2012).

<sup>&</sup>lt;sup>8</sup> Verizon-SpectrumCo Order at  $\P$  77.

See Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, WT Docket No. 05-265, Second Report and Order, FCC 11-52 (rel. Apr. 7, 2011).

See Verizon-SpectrumCo Order at ¶ 84 (once again acknowledging "the difficulties providers have had obtaining broadband data roaming arrangements . . . .").

CCA therefore urges the Commission to use its latest assessment of broadband deployment to all Americans as the rightful vehicle to pursue pro-competitive policies that will level the playing field, ensure access to critical inputs, and spur investment and innovation in the wireless industry.

At a minimum, the Commission should take the following four steps to address critical harms to competition:

- (1) In its forthcoming Mobile Spectrum Holdings Notice of Proposed Rulemaking ("NPRM"), the FCC should consider more broadly the competitive implications of spectrum aggregation and revise (or replace) its spectrum screen and other analytical tools used to help evaluate spectrum-related transactions.
- (2) In its forthcoming Incentive Auctions NPRM, the Commission should take steps to make more spectrum available, and implement measures such as strict eligibility requirements and competitive bidding credits for new entrants and small and mid-sized carriers, to ensure that the Twin Bells do not continue to dominate auction after auction.
- (3) The Commission should take immediate action to promote a vibrantly competitive device ecosystem, particularly in the 700 MHz band, that in turn will spur new infrastructure deployment and economic growth.
- (4) The Commission should continue its work to ensure that other critical inputs, such as roaming arrangements and special access services, are made available to competitive carriers on commercially reasonable terms and conditions and at just and reasonable prices.

The Commission has noted that "consumers are using mobile broadband to a greater degree than ever before," but until the Commission acts to restore competition and creates a regulatory structure that will protect all carriers' access to critical inputs, consumers, particularly those in rural America, 12 will suffer.

Additionally, Verizon Wireless has appealed the Commission's *Data Roaming Order*. *Cellco P'ship d/b/a Verizon v. FCC*, Nos. 11-1135 & 11-1136 (D.C. Cir. May 13, 2011).

Ninth NOI at  $\P$  22.

Ninth NOI at \$\frac{1}{3}\$ 38 ("Nearly one quarter of the people living in rural areas lack broadband access . . . .) (citing 2012 Eighth Broadband Progress Report at Section IV.C.2–3).

### II. DISCUSSION

## A. THE COMMISSION SHOULD PROMPTLY FIX ITS BROKEN SPECTRUM SCREEN IN ITS FORTHCOMING MOBILE SPECTRUM HOLDINGS NPRM

CCA commends the Commission on its stated intention to initiate a proceeding to review its policies governing mobile wireless spectrum holdings (including the spectrum screen)<sup>13</sup> and urges prompt completion of the proceeding. Recent transactions by the Twin Bells have triggered the spectrum screen in limited circumstances. <sup>14</sup> The Twin Bells' spectrum aggregation—which has only accelerated in recent years under the broken spectrum screen—warrant prompt resolution of this rulemaking to consider (1) the shortcomings of the Commission's existing framework for reviewing secondary market transactions, and (2) additional measures to safeguard competition in the wireless sector. The Commission should prioritize completion of its Mobile Spectrum Holdings NPRM over its review of transactions that would only exacerbate ongoing harms to competition and consumers.

In 2004, the Commission adopted a "spectrum screen" to assist in identifying whether a proposed transaction might raise spectrum concentration concerns.<sup>15</sup> But it has become abundantly clear that the spectrum screen is broken—at a minimum, it is "no stranger to controversy." Competitive carriers, including Sprint<sup>17</sup> and T-Mobile<sup>18</sup>, have explained why the

The Verizon/SpectrumCo/Cox transaction triggered the spectrum screen in only 18 CMAs; none of AT&T's proposed transactions exceed the initial screen.

<sup>&</sup>lt;sup>13</sup> *Verizon-SpectrumCo Order* at  $\P$  63.

See Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services, WT Docket No. 10-133, Fifteenth Report, FCC 11-103 at ¶ 281 (rel. June 27, 2011) ("Fifteenth Wireless Competition Report").

Sarah Jerome, *Verizon Deal Tees up Battle over Spectrum Screen*, available at http://www.ft.com/cms/s/2/4deac86e-5ee0-11e1-a087-00144feabdc0.html#axzz26SM4Jb61 (visited Sept. 14, 2012).

Comments of Sprint Nextel Corporation, Applications of Cellco Partnership d/b/a
Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC For Consent to Assign AWS-1
Licenses, WT Docket No. 12-4 at 17 (filed Feb. 21, 2012).

current spectrum screen is wanting in several ways. Initially, the screen was adopted at a much different time in industry history, when capacity demands were lower and available spectrum was higher. Now, with only a small amount of spectrum likely to come online or become available on the secondary market in the near term, the screen must be re-examined.

In its NPRM, CCA encourages the Commission to take a fresh and comprehensive look at how the tremendous increase in spectrum aggregation in the wireless industry has affected competition and consumers, and what corrective measures should be adopted. Plainly, revising or replacing the spectrum screen must be a core priority. The flawed screen in use today should not provide a basis for the Twin Bells to argue that the Commission may ignore actual harms to competition or the public interest, and it is clear that the current screen does not provide an adequate tool for the Commission to evaluate spectrum consolidation and the corresponding harm to consumers. Instead, the Commission should employ a more nuanced analysis, evaluating each proposed license transfer in light of the characteristics of the spectrum at issue and the market positions of the applicants, among other key factors. Moreover, with auctions on the horizon, auction participants will need to have clear rules of the road, which will require the Commission to provide clarity on its spectrum screen and other evaluative tools. The Commission also should seek comment on structural changes that would more effectively promote competition.

The Commission has determined that removing barriers to investment requires removing obstacles to deployment, competition and adoption, all of which are interrelated. Adopting needed reforms to the spectrum screen will accelerate broadband deployment opportunities,

Petition to Deny of T-Mobile, USA, Inc., Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC For Consent to Assign AWS-1 Licenses, WT Docket No. 12-4 at ii (filed Feb. 21, 2012).

especially to rural America. Finally, this vital rulemaking should take precedent over the processing of any application that would increase spectrum aggregation among the Twin Bells, particularly AT&T's latest binge of applications. The inability of competitive carriers to participate in the secondary market for spectrum because of the supra-competitive value AT&T and Verizon Wireless attach to it and the Twin Bells' disproportionately lower cost of capital only exacerbate the problem of timely deployment of broadband to all Americans. Under the current screen, with Commission reform only on the distant horizon, the Twin Bells have been able to corner the secondary markets. Failure to properly prioritize these matters will undoubtedly result in additional harm to industry competition, a core statutory responsibility of the Commission.<sup>19</sup>

## B. ANTI-COMPETITIVE SPECTRUM AGGREGATION ENABLES THE TWIN BELLS TO FORECLOSE COMPETITION, HINDERING BROADBAND DEPLOYMENT

The Commission has acknowledged that "the current spectrum forecast demonstrates that the amount of mobile data demanded by American consumers is likely to exceed the capacity of wireless networks in the near term . . . ."<sup>20</sup> Yet AT&T's most recent spectrum binge has resulted in it and Verizon Wireless controlling (or poised to control) enormous amounts of scarce spectrum. As of today, AT&T is seeking the Commission's blessing to acquire <u>at least one</u> hundred and two 700 MHz Band B Block licenses, ten 700 MHz Band C Block licenses,

Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC For Consent to Assign AWS-1 Licenses, WT Docket No. 12-4, Statement of Chairman Julius Genachowski (rel. Aug. 23, 2012).

Fifteenth Wireless Competition Report at ¶ 267; see also Federal Communications Commission Staff Technical Paper, Mobile Broadband: The Benefits of Additional Spectrum (rel. Oct. 2010).

fifty nine AWS-1 licenses and fifty one WCS licenses.<sup>21</sup> This is in addition to its recent acquisition of all six Lower 700 MHz D Block licenses and significant Lower 700 MHz E Block licenses from Qualcomm<sup>22</sup> and numerous other Lower 700 MHz B and C Block licenses in other proceedings<sup>23</sup>. AT&T's buying spree is in addition to Verizon Wireless's agreements with

<sup>21</sup> See AT&T Mobility Spectrum LLC and Triad 700, LLC Seek FCC Consent to the Assignment of 27 Lower 700 MHz Band B Block Licenses, Public Notice, ULS File No. 0005286787, DA 12-1244 (rel. Aug. 1, 2012); AT&T Seeks FCC Consent to the Assignment and Transfer of Control of WCS and AWS-1 Licenses, Public Notice, WT Docket No. 12-240, DA 12-1431 (rel. Aug. 31, 2012); AT&T Mobility Spectrum LLC and CenturyTel Broadband Wireless, LLC Seek FCC Consent to the Assignment of Lower 700 MHz Band and AWS-1 Licenses, Public Notice, ULS File No. 0005337520, DA 12-1479 (rel. Sept. 11, 2012); AT&T Mobility Spectrum LLC and Cavalier Wireless, LLC Seek FCC Consent to the Assignment of Ten Lower 700 MHz Band B Block Licenses and 41 Advanced Wireless Services License, Public Notice, ULS File No. 0005295740, DA 12-1247 (rel. August 1, 2012); AT&T Mobility Spectrum LLC and David L. Miller Seek FCC Consent to the Assignment of 13 Lower 700 MHz Band B Block Licenses, Public Notice, ULS File No. 0005296026, DA 12-1248 (rel. August 2, 2012); AT&T Mobility Spectrum LLC and 700 MHz, LLC Seek FCC Consent to the Assignment of Two Lower 700 MHz Band C Block Licenses, Public Notice, ULS File No. 0005262760, DA 12-1112 (rel. July 11, 2012); AT&T Mobility Spectrum LLC and Ponderosa Telephone Co. Seek FCC Consent to the Assignment of a Lower 700 MHz Band C Block License, Public Notice, ULS File No. 0005295055, DA 12-1238 (rel. Aug. 1, 2012); AT&T Mobility Spectrum LLC and Comsouth Tellular, Inc. Seek FCC Consent to the Assignment of Two Lower 700 MHz Band C Block Licenses, Public Notice, ULS File No. 0005304258, DA 12-1249 (rel. August 2, 2012); AT&T Mobility Spectrum LLC and Farmers Telephone Company, Inc. Seek FCC Consent to the Assignment of A Lower 700 MHz Band C Block License, Public Notice, ULS File No. 0005293645, DA 12-1250 (rel. August 2, 2012); and AT&T Mobility Spectrum LLC and McBride Spectrum Partners, LLC Seek FCC Consent to the Assignment of a Lower 700 MHz Band B Block License, Public Notice, ULS File No. 0005323094, DA 12-1252 (rel. August 2, 2012).

Application of AT&T Inc. and Qualcomm Incorporated For Consent to Assign License and Authorizations, WT Docket No. 11-18, Order, FCC 11-188 (rel. Dec. 22, 2011).

See, e.g., AT&T Mobility Spectrum LLC and Whidbey Telephone Company Seek FCC Consent to the Assignment of Lower 700 MHz B Block and Lower 700 MHz C Block Licenses (ULS File Nos. 0004544863 and 0004544869); AT&T Mobility Spectrum LLC and 700 MHz, LLC Seek FCC Consent to the Assignment of One Lower 700 MHz Band C Block License (ULS File No. 0004621016); AT&T Mobility Spectrum LLC and Knology of Kansas, Inc. Seek FCC Consent to the Assignment of One Lower 700 MHz B and B Block License (ULS File No. 0004635440); Shareholders of Redwood 700, Inc. and AT&T Inc. Seek FCC Consent to the Transfer of Control of Lower 700 MHz Band B and C Block Licenses Held by Redwood Wireless Corp. (ULS File No. 0004643747); AT&T

SpectrumCo, Cox, Leap Wireless and T-Mobile to purchase and/or swap more than 100 AWS spectrum licenses (increasing its AWS spectrum holdings by 20 MHz).

The direct result of AT&T and Verizon Wireless's unrelenting amalgamation of large swaths of spectrum is that small and medium sized competitors are finding it more difficult to expand their operations (in terms of both existing service areas and new geographic areas).

Ultimately this will have a spiraling effect: as AT&T and Verizon Wireless increase their share of spectrum, other carriers will become less effective competitors, which will make them less able to retain subscribers, which reduces their ability to maintain a consistent revenue stream and attract capital to invest in additional infrastructure, including spectrum. The spectrum imbalance thus will make AT&T and Verizon Wireless even stronger going forward, while hindering the ability of other carriers to compete effectively. This incentivizes AT&T and Verizon Wireless to acquire additional spectrum for the purpose of foreclosing rivals' growth, which is antithetical to industry competition—a core statutory responsibility of the Commission. With competitive, mid-sized and smaller carriers disproportionately serving the very communities the Commission's Ninth NOI identifies as under- or unserved by broadband—including rural, low-income, and minority communities—the competitive vitality of carriers

Mobility Spectrum LLC and Maxima International, LLC Seek FCC Consent to the Assignment of One Lower 700 MHz Band B Block License (ULS File No. 0004699707); and AT&T Mobility Spectrum LLC and BTA Ventures II, Inc. Seek FCC Consent to the Assignment of Lower 700 MHz Band B Block license (ULS File No. 0004777216).

Indeed, some members of CCA, such as MetroPCS, currently do not offer tablets and laptop cards as a result of a lack of spectrum.

This will be further exacerbated as data continues to explode. The FCC recently found that mobile broadband traffic will increase 35-fold by 2015. Increased data usage on smaller and mid-sized carriers' networks may cause these carriers to evaluate whether they can grow their revenues.

Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC For Consent to Assign AWS-1 Licenses, WT Docket No. 12-4, Statement of Chairman Julius Genachowski, (rel. Aug. 23, 2012).

outside of the Twin Bells correlates strongly with the deployment of broadband services to those that most lack them.

Therefore, in addition to much-needed changes to the spectrum screen, the Commission should pursue market-opening "rules of the road". CCA looks forward to the anticipated Notice of Proposed Rulemaking to implement an incentive auction of broadcast television spectrum, and urges the Commission to adopt rules such as eligibility criteria and bidding credits for this and other upcoming auctions.<sup>27</sup> CCA's carrier members (many of whom primarily serve rural America) need spectrum—primarily low-band spectrum that is interoperable and free from interference—to bring next generation services to their current and potential customers. In the interest of accelerating broadband deployment, the Commission should pursue policies which ensure that competitive carriers have a meaningful opportunity to deploy spectrum in the most cost-effective and efficient manner to meet consumer demand.

## C. SPECTRUM AGGREGATION AMONG THE TWIN BELLS HAS IMPAIRED DEVICE INTEROPERABILITY AND AVAILABILITY, AND HAS HINDERED DEPLOYMENT IN THE 700 MHZ BAND

CCA has repeatedly advocated for restoring interoperability in the Lower 700 MHz band. AT&T forced adoption of technical standards which have created two artificial band classes in the Lower 700 MHz. Its segregation of Band Class 12 and creation of Band Class 17 have produced a device ecosystem in which widely available, economically reasonable handsets function only in the Lower B and C Blocks used by AT&T, and generally do not function in the Lower A Block used by smaller competitors.

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For example, CCA supports MetroPCS's recommendation that the Commission initiate an NPRM to develop additional bidding credit proposals, including MetroPCS' Broadband Incentive Discount (BID) program, which may foster new and increased competition by providing needed incentives to new entrants and small and mid-sized carriers.

Restoring interoperability is the easiest way to extend 4G LTE broadband coverage. The FCC will also significantly increase next generation, high-speed wireless coverage, immediately furthering the President's goal of reaching 98 percent of all Americans. By restoring interoperability to the Lower 700 MHz spectrum band, the FCC will: (1) extend coverage to more than 1.3 million square miles of the United States, or more than one-third of the total U.S. geography and (2) extend coverage to more than 25 million Americans mostly in rural areas, or more than 8% of the total US population, through CCA member carriers alone.

The FCC recently stated that the mobile broadband eco-system will help to generate 771,000 new jobs by 2015, but only if competitive, rural and regional carriers have access to usable spectrum and devices. In a CCA-commissioned study conducted last year, we found that full deployment of wireless broadband in rural America with a fully interoperable 700 MHz band would result in the creation and/or retention of 117,000 jobs in the 19 states with less than 90% coverage of broadband service of at least 4 Megs. Of this 117,000 jobs, approximately 40,000 will be new jobs and eliminating the urban/rural divide would lead to a \$1,200 increased median income in these 19 states.

Competitive carriers need a fertile device ecosystem to compete effectively and to provide 4G services to their customers. The Commission should recognize the impairments that

See Raul L. Katz, Javier Avila and Giacomo Meille, *Economic Impact of Wireless Broadband in Rural America*, (2011) at 55-58, available at http://www.teleadvs.com/wp-content/uploads/Microsoft-Word-RCA\_report\_v.\_13.pdf.

Id. at 57. That finding is in line with the results of a recent study that examined the transition from 3G to 4G networks and concluded that increased penetration of next-generation technologies could lead to rapid job growth, generating more than 231,000 jobs by 2013 for every 10 percentage point increase in adoption. See Robert J. Shapiro and Kevin A. Hassett, The Employment Effects of Advances in Internet and Wireless Technology: Evaluating the Transitions from 2G to 3G and from 3G to 4G, (Jan. 2012) at 4, attached to Ex Parte Letter from Mobile Future to Marlene H. Dortch, Secretary, FCC, filed in WT Docket No. 11-186, (Jan. 25, 2012).

competitive carriers face in obtaining devices, and should use the latest Broadband Progress
Report to promote policies that improve interoperability and availability of devices. The
Commission, through its NPRM regarding interoperability in the 700 MHz band<sup>30</sup> has taken an
important first step to turn the tide towards competition and restoring interoperability. CCA
appreciates the Commission's renewed and "historical[]... interest[] in promoting
interoperability" and its view that "consumer equipment should be capable of operating over the
entire range of cellular spectrum as a means to 'insure full coverage in all markets and
compatibility on a nationwide basis."

This view was affirmed most recently in the *Verizon-SpectrumCo Order*, where the Commission stated that it "continues to believe that
interoperability is an important aspect of future deployment of mobile broadband services ...

The Commission should restore interoperability in the Lower 700 MHz band before the end
of this year, and establish an advisory committee similar to the North American Numbering
Council to resolve technical and engineering issues *proven necessary* to achieve interoperability
in the Lower 700 MHz band.

# D. INCREASED CONCENTRATION IN THE HANDS OF THE TWIN BELLS MAKES IT MORE CHALLENGING FOR COMPETITIVE CARRIERS TO SECURE ROAMING ARRANGEMENTS ON COMMERCIALLY REASONABLE TERMS AND CONDITIONS

The Commission has determined that consumers now demand and expect seamless nationwide coverage of all their wireless services wherever they are located, that voice and data roaming "can be critical to providers remaining competitive in the mobile services marketplace," and that "the availability of roaming capability is and will continue to be a critical component to

Promoting Interoperability in the 700 MHz Commercial Spectrum, WT Docket No. 12-69, Notice of Proposed Rulemaking, FCC 12-31 (rel. Mar. 21, 2012).

Id. at ¶ 17 (quoting Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems, CC Docket No. 79-318, Report and Order, 86 FCC 2d 469, 482 (1981)).

<sup>&</sup>lt;sup>32</sup> *Verizon-SpectrumCo Order* at ¶ 88.

enable consumers to have a competitive choice of facilities-based providers offering nationwide access to commercial mobile data services."<sup>33</sup> Roaming is "particularly important for consumers in rural areas—where mobile data services may solely be available from small rural providers."<sup>34</sup> CCA's members are especially reliant on roaming agreements with nationwide carriers, as they simply cannot cobble together the nationwide coverage that consumers expect and demand through arrangements with other regional providers alone.

Industry concentration has increased competitive carrier dependence on the few remaining nationwide carriers to provide roaming on commercially reasonable terms and conditions. Yet competitive carriers "have encountered significant difficulties in obtaining data roaming arrangements" with the Twin Bells.<sup>35</sup> What's worse, with the impending transition to 4G technology, the Commission found it likely that AT&T and Verizon Wireless "will not be willing to offer roaming arrangements that cover [4G] networks any time in the near future, except in very limited circumstances."

The Commission's *Data Roaming Order* was a welcome step in alleviating the problems that competitive carriers face in obtaining nationwide data roaming, but significant challenges remain. First, Verizon Wireless has appealed the *Data Roaming Order*, and thus the fate of the Order remains in limbo. Second, the Order, even if upheld on appeal, does not ensure 4G data roaming because it requires roaming only where "technologically compatible." Until interoperability in the Lower 700 MHz Band is restored, 4G LTE networks using Lower 700

Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, WT Docket No. 05-265, Second Report and Order, FCC 11-52, ¶ 15 (rel. Apr. 7, 2011) ("Data Roaming Order").

<sup>&</sup>lt;sup>34</sup> *Id*.

<sup>35</sup> *Id.* at ¶¶ 17-20.

<sup>36</sup> *Id.* at  $\P$  27.

<sup>37</sup> *Id.* at  $\P$  43.

MHz spectrum will not be technologically compatible, creating a barrier to roaming. Finally, though the *Data Roaming Order* may be an important backstop for private negotiations, such negotiations remain highly asymmetrical, with the largest carriers having significant bargaining advantages over smaller carriers and the ability and incentive to withhold roaming arrangements as a means to foreclose competition. And when "market" rates are set by duopolists, the rates that competitive carriers pay remain well above the level that would prevail in a healthy marketplace.

CCA is working with its members to find business solutions to these roaming challenges. In the meantime, the FCC should ensure regulatory certainty and fair roaming arrangements. As CCA members have repeatedly stated, fair and reasonable roaming terms and conditions will foster competition among all providers and therefore encourage greater investment in their networks. The Commission should continue to monitor the state of data roaming agreements, and step in where necessary to ensure that competitive carriers are in fact able to obtain roaming agreements on commercially reasonable terms and conditions.

## E. THE COMMISSION SHOULD IMPROVE ITS OVERSIGHT OF ILEC SPECIAL ACCESS SERVICES TO ENSURE THAT BACKHAUL IS AVAILABLE TO COMPETITIVE CARRIERS AT JUST AND REASONABLE PRICES

Finally, special access is a crucial input that is necessary for competition to flourish, but unfortunately is available at supra-competitive rates because of a dearth of competition among wireline backhaul providers. In its *Fifteenth Wireless Competition Report*, the Commission specifically noted that "[b]ackhaul costs currently constitute a significant portion of a mobile wireless operator's network operating expense, and the demand for backhaul capacity is increasing." Reflecting the particularly acute market distortions in the provision of special access services, the Commission observed that the *cost* of backhaul services is highly correlated

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Fifteenth Wireless Competition Report at  $\P$  322.

to spectrum holdings—with carriers holding more spectrum and spectrum in lower frequencies able to "reduce [their] cell site and backhaul costs by deploying fewer cell sites and potentially fewer backhaul transmission lines for a given traffic volume."<sup>39</sup> Not surprisingly, the Twin Bells possess both the most *aggregate* spectrum and the most *low-band* spectrum, in contrast to competitive carriers. Since the Commission deregulated special access, prices have risen.<sup>40</sup> This is not surprising given that the two dominant providers of special access, Verizon and AT&T, are affiliated with the two dominant wireless carriers.

The Commission, in adopting its Report and Order temporarily suspending the Commission's rules allowing for automatic pricing flexibility grants for special access services, acknowledged wireless providers' claims that "high special access prices hinder their ability to hire employees, invest in their networks, and conduct research and development[,]" and further found that "the competitive showings the Commission adopted as a proxy for competition are not working as predicted . . . ." Moreover, "recent data indicates that competitors have a strong tendency to enter in concentrated areas of high business demand, and have not expanded beyond those areas despite the passage of more than a decade since the grant of Phase II relief." This only exacerbates the anticompetitive harms felt by rural wireless providers needing special access services, the availability of which has been linked to the state of competition in wireless

<sup>39</sup> *Id.* at  $\P$  64.

See, e.g., Comments of PAETEC Holdings Inc. et al., Special Access Rates for Price Cap Local Exchange Carriers, WC Docket No. 05-25, at 2-5 (filed Jan. 19, 2010).

Special Access for Price Cap Local Exchange Carriers, Report and Order, 47 F.R. 57504 at ¶ 3 (2012); see also id. at ¶ 94 ("Special access circuits are a particularly important input for carriers' broadband service offerings. As the National Broadband Plan found, the costs associated with purchasing special access circuits can be a significant expense that impacts a carrier's ability to provide affordable broadband service, particularly to smaller, rural communities.")

<sup>42</sup> *Id.* at  $\P$  48.

services.<sup>43</sup> Integrally related and both highly marked by significant market distortions, the markets for special access services and spectrum demand prompt Commission attention.

CCA commends the Commission on its proposed market analysis and assessment of whether actual and potential competition for special access is currently sufficient to discipline prices; however, comprehensive special access pricing reform is needed to ensure that backhaul is available to wireless competitors on reasonable terms and conditions. Absent such reform, smaller competitors will have little hope of competing with the Twin Bells that obtain special access from their own affiliates, which will stunt broadband deployment, particularly in rural areas.

#### III. CONCLUSION

According to the Commission's 2012 Eighth Broadband Progress Report, nearly 19 million Americans still lack access to broadband, which accounts for one in every four people living in rural America.<sup>44</sup> The best path to rapid deployment of advanced telecommunications capability to *all* Americans is for the Commission to develop and implement pro-competitive, pro-consumer policies that restore competition and ensure that competitive carriers have a level playing field on which to compete with the Twin Bells.

Respectfully submitted,

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See, e.g., Applications of AT&T Inc. and Deutsche Telekom AG For Consent to Assign or Transfer Control of Licenses and Authorizations, WT Docket No. 11-65, Staff Analysis and Findings, at ¶ 82, n.247 (rel. Nov. 29, 2011).

<sup>&</sup>lt;sup>44</sup> 2012 Eighth Broadband Progress Report at Section II.C.